

RD AN No. 3469 (1965-B)
June 1, 1999

TO: State Directors, Rural Development Managers,
and Community Development Managers
Rural Development

FROM: Eileen M. Fitzgerald
Acting Administrator
Rural Housing Service

SUBJECT: Transfer/Assumption of Multi-Family Housing Loans

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide further guidance in the assumption and transfer of Multi-Family Housing (MFH) loans.

COMPARISON WITH PREVIOUS AN:

This AN supersedes AN No. 3366(1965-B) dated October 20, 1997, on this subject.

IMPLEMENTATION RESPONSIBILITIES:

State Directors and housing staff should familiarize themselves with transfer/assumption authorities covered by RD Instruction 1965-B and the guidance outlined in this AN.

I. Objective.

In order to better serve tenants and retain high quality MFH sponsors, stimulate rehabilitation of older projects, and extend the useful life of and protect the Government's security, we need to utilize our existing transfer policies to allow for borrower restructuring in order to obtain financial incentives, such as tax credits and syndication proceeds available to the low-income housing industry. However, loan restructuring will only apply to those projects where the owner entity is in compliance and has met their responsibilities as required by all loan instruments.

EXPIRATION DATE: April 30, 2000

FILING INSTRUCTIONS:
Preceding RD
Instruction 1965-B

II. Transfer/Assumption Policies.

Section 1965.65 of RD Instruction 1965-B describes the policies for approving transfers of real estate security and the assumption of loans. The requirements of this section allow borrowers to transfer their project(s) to another separate and distinct entity in which members are participants in both the transferring and the assuming entities. The entity must be legally organized and the transferee must meet the requirements of RD Instructions 1965-B and 1944-E and the guidance of this AN. Caution should be used in distinguishing a transfer from a change in membership. Changes involving 100 percent membership changes or changes in the name of an entity must be treated as a transfer and processed in accordance with section 1965.65.

III. Evaluation of Applicants and Eligibility Determination.

The approving official will evaluate the eligibility of the transferee (applicant) in accordance with the provisions of RD Instructions 1944-E, 1965-B and the following:

- A. The Servicing Office, State Architect, and Civil Rights Coordinator will make an on-site inspection of each unit in the project being transferred to document any issues in noncompliance with loan obligations. A compliance review will also be conducted at that same time provided one has not been completed in the past 12 months. Pictures of any deficiencies will be made part of the applicant's file.
- B. The transferee/applicant must be in compliance, or have been complying with an approved workout plan, generally for a minimum of 6 months on all other projects owned by members of the assuming entity to be considered eligible for additional Rural Development assistance. The State Director may waive this requirement for borrowers who are in noncompliance through circumstances beyond their control.
- C. Outstanding environmental concerns must be identified and corrective action taken to mitigate these conditions. Any project where environmental concerns have been identified will not be approved for transfer without review by the National Office. The transfer file must include an environmental review by the State Environmental Coordinator. Examples of concerns include, but are not limited to:
 - 1. Water supply problems.
 - 2. Pesticide application by aerial and ground spraying.
 - 3. Sewage disposal problems (leakage onto ground, into creeks, river, etc.).
- D. Any audits or investigations conducted by the Office of Inspector General (OIG) must be closed or disposed of to the satisfaction of the OIG.
- E. Identity of Interest transfers will not be approved before the State Director can certify that all of the following conditions exist:
 - 1. The account is current.
 - 2. The reserve account is on schedule, less any authorized withdrawals.
 - 3. The taxes and insurance account is on schedule and all outstanding bills have been paid.
 - 4. The security deposit account is fully funded.
 - 5. All maintenance items outstanding have been completed.

6. Management is satisfactory and there is an approved management plan and management agreement, if applicable.

7. Borrower is in compliance with Equal Opportunity, Fair Housing and RD 1930-C instructions.

F. Services and Uses Comprehensive Evaluation (SAUCE) is being used to analyze the financial viability of the project using subsidy layering review, gap analysis, and 15-year cash flow proforma based on various assumptions. The certification by the approval official will state, "The minimum amount of assistance necessary is being provided to this transaction."

IV. Tax Credits for any Transfer.

A. Where tax credit incentives are being provided to the transferee, the transferee's legal counsel should provide an opinion stating that the transaction does not violate the rules of Section 42 of the Internal Revenue Service (IRS) regulations, or where applicable, obtain a ruling from the IRS pursuant to the procedures outlined in Rev. Proc. 93-1, 1933-1 I.R.B. 10.

B. The amount of indebtedness to be assumed will be based on an appraisal that meets USPAP and reflects the current fair market value. In no instances will appraisals be inflated to defer loan losses/write-offs, avoid adverse tax consequences, or to support a higher tax credit basis.

V. Structuring a Transfer Agreement.

A. Form RD 465-5, "Transfer of Real Estate Security," will be used to record the agreements between the transferor and transferee with an addendum if necessary.

B. The agreement will be prepared to show all transactions involved relating to equity, including disposition of syndication proceeds between the transferee and transferor, method and source of payment, payment of recoverable costs items, disposition of future paid payments, assignment of project accounts and leases, disposition of any equipment purchased with loan or project funds, etc.

C. The agreement should document any necessary actions to bring the project into compliance with regulations and loan instruments, such as delinquent payments, underfunded reserves, deferred maintenance. If there are health and safety deficiencies identified, an action plan for immediate steps to take corrective measures must be included. These agreements should state which party would be responsible and the source of funds. Additional information may be attached to RD Form 465-5 as needed to ensure that all agreements are documented.

VI. Payment of Equity.

A. No compensation, equity or syndication proceeds will be paid to the transferor by the transferee in connection with any transfers unless all the following conditions are met:

1. The account is current.
2. The reserve account is on schedule, less any authorized withdrawals.

3. The taxes and insurance account is funded and all outstanding bills paid.
4. The security deposit account is current.
5. There are no outstanding serious maintenance items uncompleted.
6. Management is satisfactory and there is an approved management plan and management agreement, if applicable.
7. Project has been operated in compliance with Fair Housing and Equal Opportunity requirements and no project funds have been misappropriated.

B. When all of the conditions in paragraph VI A cannot be met, the State Director may request the National Office to authorize an equity payment only when all other alternatives, including liquidation, would not be in the best interests of the Government and tenants. Requests for the Administrator's exception authority will be in accordance with Section 1965.97 of RD Instruction 1965-B. The loan files, including the transfer application file, must be submitted with any request for exception authority.

VII. Rehabilitation in Connection with the Transfer.

A. All necessary repairs to assure that the housing will be decent, safe and sanitary, and/or other improvements proposed by the applicant to enhance long-term viability of the housing will be identified and agreed to by Rural Development as part of the approval of the transfer.

B. The transferee will provide a plan for any repairs or enhancements as part of the application package. The plan will identify each repair/enhancement item, the timeframe for completion, estimate of costs for each item, who will do the work, and any Identity of Interest between the transferee and the party(ies) doing the work or providing materials/services. Rural Development must concur with the plan as part of the approval of the transfer.

C. Priority sources for repairs or enhancements:

1. Transferor's equity payment, including any syndication proceeds the transferee releases to the transferor.
2. Contributions by the transferee.
3. Reserve account funds being transferred (provided the amount remaining will be adequate to meet the maintenance and expenses in the immediate or near future).
4. Loan funds, if available.
 - a. Loan funds will be used only as a last resort and only to the extent needed for essential repairs.
 - b. When use of the above items has been exhausted, a Rural Development subsequent loan may be made for capital improvements and enhancements (e.g., disability accessibility, security measures, etc.).

D. Exhibit K to RD Instruction 1924-A may be used as a guide in determining what Rural Development considers maintenance and rehabilitation of MFH projects. This is a guide; flexibility should be used to protect the Government's interest to enhance the long-term livability of the housing and/or handicapped accessibility.

E. A plan must be developed to address how tenants will be relocated if necessary to rehabilitate the project.

The attachment is being provided as a checklist to assist Servicing Officials in processing transfers and certifying to actions that are applicable to certain transactions. However, under no circumstances should the checklist be considered as a substitute for good sound transfer processing practices. The provisions of Section 1965.65 of RD Instruction 1965-B must be followed at all times in processing transfers.

All transfers that are in process and not yet closed should be reviewed for compliance with this AN. Any transfer that is not in compliance or cannot be processed in compliance with this AN will not be processed further without guidance from the National Office.

Further questions should be directed to the MFHPM Division at 202-720-1600.

Attachment

Rural Rental Housing Transfer Checklist

1. Name of Transferee (Applicant): _____

2. Transferee's Tax ID or Social Security No.: _____

3. Name of Transferee's Attorney: _____

4. Name of Transferor: _____

5. Transferor's Borrower ID No. _____ Project No. _____

6. Name of Project: _____

7. Type of Transfer: Same Terms ☐ New Terms ☐8. Does applicant meet eligibility requirements? ☐ Yes ☐ No9. Is this an Identity of Interest transfer? ☐ Yes ☐ No

10. THE APPROVAL OFFICIAL MUST CERTIFY THAT THE FOLLOWING ITEMS HAVE BEEN COMPLETED, WHERE APPLICABLE. CHECK OFF ITEMS THAT CAN BE CERTIFIED TO:

☐ On-site inspection and compliance review have been completed.
(Reports must be made a part of the transfer file.)

☐ Environmental concerns have been identified and corrective action has been taken to mitigate the conditions.

☐ Sources and Uses Comprehensive Evaluation (SAUCE) has been conducted and the necessary minimum assistance is being provided to this transaction.

For Existing Borrowers who are Applicants:

☐ There are no outstanding audits and investigations against the borrower or related entities.

☐ Where applicable, the borrower is in compliance on all other projects or complying with an approved workout plan(s) for a minimum of 6 months.

For Identity of Interest Transfers:

☐ The loan account(s) is current.

☐ The reserve account is on schedule, less authorized withdrawals.

☐ The taxes and insurance account is on schedule and all outstanding bills paid.

- [] The security deposit account is fully funded.
- [] There are no outstanding maintenance items.
- [] Management is satisfactory and meets the requirements of Section III, E,
Items 6 & 7 of this AN.

11. SUMMARY OF DEVELOPMENT TO BE COMPLETED AND ESTIMATED COST:

12. SOURCE OF FUNDS FOR DEVELOPMENT WORK:

Funds in existing supervised bank account:	[]	\$	_____
Contributions by the Transferor:	[]	\$	_____
Contributions by the Transferee:	[]	\$	_____
Reserve account being transferred:	[]	\$	_____
Rural Development loan funds:	[]	\$	_____
Other (describe):	[]	\$	_____

(See Development Plan or Estimate of Costs)

13. CONSIDERATION FOR CONVEYANCE OF THE SECURITY:

Amounts are approximate.

Assume Rural Development Debt	\$	_____
Assume Indebtedness to:	\$	_____
Assume Indebtedness to:	\$	_____
Pay the Transferor as Equity:	\$	_____

Equity will be paid: In Cash ()
Payments ()

If payments, source of funds for Payments:

Total Consideration: \$ _____

PREPARED BY _____

DATE _____